

(2011) 08 PAT CK 0050

In the Patna High Court

Case No : Criminal WJC No. 587 of 2011

Md. Arshad Alam @ Chhotu @ Irshad and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-08-2011

Acts Referred:

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 16(2), 2, 20, 64, 7A

Juvenile Justice Act, 1986 — Section 2

Penal Code, 1860 (IPC) — Section 302

Citation : (2012) CriLJ 256 : (2011) 4 PLJR 256

Hon'ble Judges : Navaniti Pd. Singh, J; Ashwani Kr. Singh, J

Bench : Division Bench

Judgement

1. The two petitioners in this writ petition were convicted of an offence u/s 302 IPC which they have committed on 9.9.1992. The judgment of the Sessions Court was rendered on 26.11.1994. They were sentenced to undergo rigorous imprisonment for life. They appealed to the High Court, and the Division Bench of the High Court dismissed their appeal by judgment dated 3.8.2001 against which, they preferred SLP (Criminal) No. 7061 of 2001 unsuccessfully. Thus the judgment of conviction and sentence as awarded on 26.11.1994 by the trial court stood affirmed up to the Apex Court.

2. It may be noticed here that when the offence was alleged to have been committed, the Juvenile Justice Act, 1986 was in force. Here, juvenile was defined by Section 2(h) to mean a boy who has not attained the age of 16 years. Here, it may also be noticed that plea of juvenility of either of the two petitioners was not raised either before the trial court or before the High Court in appeal or before the Supreme Court in appeal.

3. The said Act of 1986 was then repealed and replaced by Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the "Act"). Here, "Juvenile" was defined by Section 2(k) to mean a person who has not completed

18 years of age. Thus, it would be seen that with effect from 1st April, 2001 when the Act of 2000 came into effect, the earlier age of a juvenile boy was increased from 16 to 18 years. Petitioner No. 1 claims to have been born on 10.10.1976 and petitioner no. 2 on 28.8.1975. This would make petitioner no. 1 less than 16 years of age on the date of occurrence and petitioner no. 2 slightly more than 17 years of age.

4. Mr. Bakshi S.R.P. Sinha, learned Senior Counsel appearing on behalf of the petitioners in support of this criminal writ application submits that as the petitioners were juvenile in conflict with law within the meaning of the Act of 2000, upon introduction of Section 7A to the said Act with effect from 2006, they had to be given the benefit of juvenility in terms of Section 20 of the said Act. On the day when their SLP (Cr.) was dismissed by the Apex Court, the Act of 2000 had been enforced and their appeal was pending, unfortunately, the petitioners could not take the plea at that time.

5. After coming into force of Section 7A of the said Act, they filed a writ petition before this Court, being Cr. W.J.C. No. 15 of 2010, which was disposed of on 4.2.2010 (Annexure-1), giving liberty to the petitioners to move appropriate forum, as determining the question of age involved disputed question of fact. Petitioners, then, moved the trial court. The trial court by its order dated 3.11.2010 (Annexure-5), noticing that the petitioners had produced certificate granted by the Bihar State Madarsa Board and the Bihar School Examination Board, Patna, noticed the date of birth of the two petitioners and being prima facie satisfied that the two petitioners were juvenile within the meaning of Section 2(k) of the Juvenile Justice Act, 2000, referred the matter to the Juvenile Justice Board, Nawada. The matter having been received by the Juvenile Justice Board, the Juvenile Justice Board by order dated 29.1.2011 (Annexure-6) declined to go into the question on the ground that there was no appeal, revision, etc. pending and, as such, it would not exercise its jurisdiction in this matter.

6. By this writ petition, petitioners have challenged their continued detention in regards to serving out the life imprisonment on the ground that they were juvenile in conflict with law and, as such, could not be sentenced to life imprisonment.

7. In our view, the writ petition for the relief as prayed for is misconceived. We may point out that the plea of the learned Senior Counsel that by virtue of Section 7A and in particular the proviso to sub-section (1) does not give right to the petitioners to move this writ petition.

8. For better appreciation, we may quote Section 7A(1), which is as follows:

Whenever a claim of juvenility is raised before any Court or a Court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the Court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and

shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

Provided that a claim of juvenility may be raised before any Court and it shall be recognized at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

9. This Court has already held in the case of Kamta Mahto @ Kamta Singh @ Kamta Choudhary vs. The State of Bihar and Ors., being Cr. W.J.C. No. 483 of 2011*, disposed of on 21.7.2011 the expressions "before any Court", "at any stage", "even after disposal of the case" has to be harmoniously construed as a scheme meaning continuity of the criminal proceedings and not an independent collateral proceedings like a criminal writ. Apart from other, the reason is simple. Any direct interference by this Court in giving benefit to the petitioners on the plea of juvenility would necessarily lead to the consequential order that the sentence as passed by the trial court, affirmed by Division Bench of this Court as also by the Apex Court, were all bad and stood vitiated. We are of the opinion that we have no such power to set aside the sentence as affirmed by the Apex Court.

10. Mr. Bakshi S.R.P. Sinha, learned Senior Counsel then, submitted that even, if the Juvenile Justice Board declined to inquire into the matter, nothing stops State Government in reviewing the matter in terms of Section 64 of the Act of 2000, which is quoted hereunder:

In any area in which this Act is brought into force, the State Government shall direct that a juvenile in conflict with law who is undergoing any sentence of imprisonment at the commencement of this Act, shall, in lieu of undergoing such sentence, be sent to a special home or be kept in fit institution in such manner as the State Government thinks fit for the remainder of the period of the sentence; and the provisions of this Act shall apply to the juvenile as if he had been ordered by the Board to be sent to such special home or institution or, as the case may be, ordered to be kept under protective care under sub-section (2) of Section 16 of this Act:

Provided that the State Government, or as the case may be the Board, may, for any adequate and special reason to be recorded in writing, review the case of a juvenile in conflict with law undergoing a sentence of imprisonment, who has ceased to be so on or before the commencement of this Act, and pass appropriate order in the interest of such juvenile.

11. It may be noticed that Section 64 of the Act itself underwent substantial changes in the year 2006, but, one thing was there, that it made it obligatory upon the State Government to review case of persons undergoing sentence of imprisonment at the commencement of the Act and, in case, they were found to be juvenile in conflict with law then, appropriate steps had to be taken in

accordance with Act. Thus, appropriate steps would be following the procedure of the Act to withdraw them from the sentence and take action as may be commended by the Juvenile Justice Board, it is not in dispute that when this Act 2000 came into force with effect from 1.4.2001, petitioners were serving sentence of life imprisonment. Their claim to be juvenile is based on authentic document of the Bihar School Examination Board and the Bihar State Madarsa Board.

12. In our view, it would be appropriate for the petitioner to move the State Government in this regard. Mr. Bakshi S.R.P. Sinha, learned Senior Counsel, points out that, in fact, they have moved the State Government as far back as in the year 2008. He has also annexed different orders of the State Government passed in different cases where suo motu the Government is reviewing the case. But, he submits that for some curious reason, cases of petitioners are not being taken up. In our view, once petitioners raise plea of juvenile, then the State Government in terms of Section 64 of the Act is obliged to inquire into the matter and get the matter inquired into and then, take appropriate steps. It must be kept in mind that this Act, as Supreme Court has repeatedly held, is a beneficial piece of legislation for the protection of juveniles. It gives certain protections to juveniles who are in conflict with law. The date of juvenility, which is material, is the date when the occurrence took place, however old he may be now. The benefit, if they are found to be juvenile has to be given to them.

13. We, accordingly, direct the Secretary-cum-Commissioner, Department of Home, Government of Bihar, Patna, respondent No. 2, to get the matter inquired into with regard to age of the petitioners based upon the certificate granted by the Bihar School Madarsa Board and Bihar School Examination Board, Patna, after verifying their authenticity and would take appropriate decision in terms of Section 64 of the Act of 2000 and pass appropriate orders within two months from the date of receipt/production of a copy of this order.

14. At this stage, learned counsel draws our attention to Memo No. 3802 dated 14.9.2010 of the Superintendent Central Jail, Gaya to the Juvenile Justice Board, Gaya and list appended thereto which allegedly shows the petitioners' case as well. It may be noted here that the petitioners have been in custody for over ten years now. Their cases need to be expeditiously dealt with.

15. With these observations and directions, the writ petition stands disposed of.